

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PNC BANK, National Association,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. _____
	)	
NEUBERGER BERMAN, LLC,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

COMPLAINT

**PARTIES**

1. Plaintiff PNC Bank, National Association ("**PNC**") is a national banking association with a main office address of 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222 and is a citizen of Pennsylvania for the purposes of diversity.

2. Defendant Neuberger Berman, LLC ("**Neuberger Berman**") is a Delaware limited liability company with a main office address of 605 3rd Ave New York, New York and is a citizen of New York for the purposes of diversity.

**JURISDICTION AND VENUE**

3. This Court has original diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because complete diversity exists between Plaintiff and Defendant, and the amount in controversy, exclusive of interest and costs, exceeds the sum of USD 75,000.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to this action occurred in Pittsburgh, Pennsylvania.

### FACTUAL BACKGROUND

5. On August 6, 2008, PNC and Neuberger Berman entered into an agreement for the exchange of currency as evidenced by, *inter alia*, PNC BANK Foreign Exchange Confirmation, Trade Number 1448260 (the "**Agreement**"). A true and correct copy of the Agreement is attached as Exhibit "A".

6. Under the terms of the Agreement, Neuberger Berman was obligated to deliver USD 40,273,200.00 to PNC on February 11, 2009.

7. The Agreement provided that Neuberger Berman's delivery of USD 40,273,200.00 would activate PNC's conditional and reciprocal obligation to deliver to Neuberger Berman EUR 26,400,000.00.

8. Neuberger Berman failed to deliver USD 40,273,200.00 to PNC on February 11, 2009.

9. PNC immediately notified Neuberger Berman of its default under the Agreement and provided Neuberger Berman with the opportunity to cure the default. (*See* February 12, 2009 correspondence attached as Exhibit "B".) Despite being provided with this opportunity, Neuberger Berman failed to cure the default.

10. At all times relevant to this matter, PNC was prepared and able to honor its conditional and reciprocal obligation to deliver EUR 26,400,000.00 to Neuberger Berman upon Neuberger Berman's delivery of USD 40,273,200.00.

**COUNT I  
BREACH OF CONTRACT**

11. PNC incorporates paragraphs 1 through 10 by reference as though set forth at length.

12. The failure of Neuberger Berman to deliver USD 40,273,200.00 on February 11, 2009 constitutes a default of its obligations to PNC and is a material breach of the Agreement.

13. Had Neuberger Berman delivered USD 40,273,200.00 on February 11, 2009, PNC would have immediately honored its conditional and reciprocal obligation to deliver EUR 26,400,000.00 to Neuberger Berman. As a result of Neuberger Berman's material breach and its ongoing failure to cure the default of its obligations, PNC will be forced to sell its position of EUR 26,400,000.00 in the market which will result in a loss to PNC of an amount in excess of USD 75,000.00.

14. In addition, PNC has incurred, and is continuing to incur, other expenses resulting from Neuberger Berman's breach including but not limited to carrying costs, escrow fees, interest and attorneys' fees.

WHEREFORE, PNC Bank, National Association respectfully requests that this Court enter judgment against Neuberger Berman and award compensatory damages to PNC as well as all other appropriate monetary damages as this Court deems equitable and just including but not limited to carrying costs, escrow fees, interest, and attorneys' fees.

**COUNT II  
SPECIFIC PERFORMANCE**

15. PNC incorporates paragraphs 1 through 14 by reference as though set forth at length.

16. Pursuant to the Agreement, Neuberger Berman was obligated to deliver USD 40,273,200.00 to PNC on February 11, 2009.

17. Neuberger Berman owes PNC the delivery of USD 40,273,200.00 as prescribed under the Agreement.

18. Due to fluctuations in foreign exchange rates, monetary damages alone are an inadequate remedy to fully compensate PNC for its losses and for the continuing harm resulting from Neuberger Berman's material breach.

WHEREFORE, PNC Bank, National Association, respectfully requests that this Court order Neuberger Berman, LLC to specifically perform its obligations under the Agreement and further that this Court award to PNC Bank, National Association, other relief including but not limited to carrying costs, escrow fees, interest and attorneys' fees as this Court deems equitable and just.

Dated: February 25, 2009

BUCHANAN INGERSOLL & ROONEY PC

/s/ Stanley Yorsz

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